

**REMARKS**

Prior to this Reply, claims 37, 39-49, 52-54, 56-66, 69, 70, and 72-76 were pending in this application, of which claims 54, 72, and 76 were independent. In the Office Action of June 28, 2011 (the "Office Action"),<sup>1</sup> the Examiner took the following actions:

- i. rejected claims 37, 39-49, 52, 53, 72, 73, 75, and 76 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- ii. rejected claims 37, 39-49, 52-54, 56-66, 69, 70, and 72-76 under 35 U.S.C. § 112;
- iii. rejected claims 37, 39-42, 44-49, 52, 53, 72, 73, 75, and 76 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,225,250 ("*Harrop*") in view of U.S. Patent No. 7,209,963 ("*Burton*");
- iv. rejected claims 54, 56-59, 61-66, 69, 70, and 74 under 35 U.S.C. § 103(a) as being unpatentable over *Harrop*, in view of *Burton*, and further in view of U.S. Patent Publication No. 2004/0001449 ("*Rostron*");
- v. rejected claims 43 and 75 under 35 U.S.C. § 103(a) as being unpatentable over *Harrop*, in view of *Burton*, and further in view of U.S. Patent No. 5,522,042 ("*Fee*"); and
- vi. rejected claim 60 under 35 U.S.C. § 103(a) as being unpatentable over *Harrop*, in view of *Burton* and *Rostron*, and further in view of *Fee*.

By this Amendment, Applicant has amended claims 39-49, 52-54, 62, 72, 73, and 76 and canceled claims 37 and 75 without prejudice or disclaimer. No prohibited new matter has been added. Upon entry of the above amendments, claims 39-49, 52-54,

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<sup>1</sup> The Office Action may contain statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

56-66, 69, 70, 72-74, and 76 will remain pending in this application, including independent claims 54, 72, and 76.

Applicant respectfully traverses all pending rejections and submits that the claims are allowable for at least the following reasons.

**I. Rejections Under 35 U.S.C. § 101**

In the Office Action, the Examiner rejected claims 37, 39-49, 52, 53, 72, 73, 75, and 76 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Applicant traverses. The pending claims are directed to statutory subject matter, as opposed to abstract ideas or other non-statutory subject matter. The Office Action has not demonstrated otherwise, particularly in view of the Supreme Court's recent guidance in the *Bilski* matter. *Bilski v. Kappos*, 130 S. Ct. 3218 (2010).

While Applicant disagrees with the Section 101 rejections and the Examiner's characterizations of the claims, in order to advance prosecution, Applicant has amended claims 39-49, 52, 53, 72, 73, and 76 to recite more clearly statutory subject matter. Claims 37 and 75 are canceled by this Amendment, thus rendering moot the rejection of those claims. Accordingly, the rejections of the claims under 35 U.S.C. § 101 should be withdrawn.

**II. Rejections Under 35 U.S.C. § 112**

Applicant traverses the rejections under 35 U.S.C. § 112 and, in particular, the assertions that claims 37, 39-49, 52-54, 56-66, 69, 70, and 72-76 fail to comply with the written-description requirement and are indefinite. However, in an effort to advance prosecution, Applicant has amended claims 40, 45, 54, 62, 72, and 76, thus rendering moot the rejections under Section 112 of claims 39-49, 52, 54, 56-66, 69, 70, 72-74,

and 76. Claims 37 and 75 are canceled by this Amendment, thus rendering moot the rejection of those claims. Further, regarding the Examiner's assertion that claim 53 is indefinite, Applicant points out that the subject matter of that claim is supported by and clearly described in the Specification in at least paragraphs [0091] and [0092].

Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the Section 112 rejections and allow the pending claims.

**III. Rejections Under 35 U.S.C. § 103(a) Based on *Harrop* and *Burton***

Claims 37, 39-42, 44-49, 52, 53, 72, 73, 75, and 76 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Harrop* and *Burton*. Claims 37 and 75 are canceled by this Amendment, rendering moot their rejection. Applicant respectfully traverses the Examiner's rejections of the remaining claims under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103(a) is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore, "[t]he mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences

*themselves* would have been obvious, but whether the claimed invention *as a whole* would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

Here, a *prima facie* case of obviousness has not been established with regard to claims 39-42, 44-49, 52, 53, 72, 73, and 76 because the Office Action does not explain why the differences between the references and Applicant’s claims would have been obvious to one of ordinary skill in the art.

Independent claim 76 recites, among other things, that a “plurality of agents communicate information indicative of a status of said plurality of agents to said manager application, said information indicative of a status comprising information regarding current load conditions” and “in response to said status information, said manager application redistributes load among said plurality of agents.” Although different in scope, independent claim 72 contains similar recitations. The hypothetical combination of *Harrop* and *Burton* does not disclose or render obvious this subject matter.

In the Office Action, the Examiner correctly acknowledges that “Harrop does not expressly disclose said plurality of agents communicate information indicative of a status of said plurality of agents to said manager application, and wherein, in response to said status information, said manager application modifies the configuration of at least one among the base layer and the support layer.” See Office Action at 10. The Examiner asserts, however, that this subject matter is disclosed by *Burton*. See *id.* Yet, no part of *Burton* discloses or otherwise teaches the above-recited subject matter of Applicant’s amended independent claims.

*Burton* is directed to distributed monitoring of endpoint devices using gateway servers. *Burton* at Abstract. *Burton* discloses implementing its method in a Tivoli Management Environment comprised of one or more Tivoli Managed Regions (TMRs), which further may be “comprised of a TMR server, one or more managed nodes, and one or more endpoints.” *Id.* at col. 4, ll. 40-52. According to *Burton*, “[t]he TMR server creates a Software Distribution (SWD) filepackage and profile that is used to distribute and install the primary software component 510 on selected managed nodes in a Tivoli Management Region (TMR).” *Id.* at col. 8, ll. 10-15. This software component may then be “configured on each of the managed nodes so that appropriate healthcheck modules 520-590 of the primary software component 510 monitor the TME components resident on the managed node and may report error events to the TEC and/or generate log files.” *Id.* at col. 8, ll. 28-34.

Unlike *Burton*, Applicant’s claims recite that a “plurality of agents communicate . . . information regarding current load conditions” to a manager application and, in response, the “manager application redistributes load among said plurality of agents.” *Burton* merely discloses that its healthcheck modules resident on managed nodes may “report error events to the TEC and/or generate log files.” See *Burton* at col. 8, ll. 25-34. Yet, no part of *Burton* teaches that any application or device “redistributes load” among the managed nodes in response to the information generated by the healthcheck modules. Therefore, the hypothetical combination of *Harrop* and *Burton* fails to disclose or render obvious a “plurality of agents communicate information indicative of a status of said plurality of agents to said manager application, said information indicative of a status comprising information regarding current load conditions” and “in response to

said status information, said manager application redistributes load among said plurality of agents,” as recited in independent claim 76, and as similarly recited in independent claim 72.

Accordingly, in view of at least the above-noted differences between claims 72 and 76 and the applied references, the Office Action has not clearly articulated a reason why the claims would have been obvious to one of ordinary skill in the art. Accordingly, Applicant respectfully submits that independent claims 72 and 76 are allowable. Claims 39-42, 44-49, 52, 53, and 73, included in the rejections over *Harrop* and *Burton*, depend from the independent claims, and are allowable at least due to their dependence on an allowable base claim. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a) of claims 39-42, 44-49, 52, 53, 72, 73, and 76.

**IV. Rejections Under 35 U.S.C. § 103(a) Based on *Harrop*, *Burton*, and *Rostron***

In the Office Action, claims 54, 56-59, 61-66, 69, 70, and 74 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Harrop*, in view of *Burton*, and further in view of *Rostron*. Office Action at 17. For at least the reasons discussed above, *Harrop* and *Burton* fail to disclose or render obvious “providing information indicative of a status of said plurality of agents to said manager application, wherein said information indicative of a status comprises information regarding current load conditions” and, “based on said information indicative of a status, redistributing load among said plurality of agents,” as recited in amended independent claim 54. Further, *Rostron* fails to overcome the deficiencies of *Harrop* and *Burton* discussed above. Indeed, the Examiner does not cite *Rostron* for that purpose.

Claims 56-59, 61-66, 69, 70, and 74 depend from independent claim 54. Thus, they are patentably distinguishable from *Harrop*, *Burton*, and *Rostron* for at least the reasons outlined above. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a) of claims 54, 56-59, 61-66, 69, 70, and 74 based on *Harrop*, *Burton*, and *Rostron*.

**V. Rejections Under 35 U.S.C. § 103(a) Based on *Harrop*, *Burton*, and *Fee***

In the Office Action, claims 43 and 75 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Harrop*, in view of *Burton*, and in further view of *Fee*. Office Action at 22. Claim 75 is canceled by this Amendment, thus rendering moot the rejection of that claim. Claim 43 depends indirectly from independent claim 76. Thus, it is patentably distinguishable from *Harrop* and *Burton* for at least the reasons outlined above. Further, *Fee* fails to overcome the deficiencies of *Harrop* and *Burton*. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a) of claim 43 based on *Harrop*, *Burton*, and *Fee*.

**VI. Rejection Under 35 U.S.C. § 103(a) Based on *Harrop*, *Burton*, *Rostron* and *Fee***

In the Office Action, claim 60 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Harrop*, in view of *Burton* and *Rostron*, and in further view of *Fee*. Office Action at 23. Claim 60 depends indirectly from independent claim 54. Thus, it is patentably distinguishable from *Harrop*, *Burton*, and *Rostron* for at least the reasons outlined above. Further, *Fee* fails to overcome the deficiencies of *Harrop*, *Burton*, and *Rostron*. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a) of claim 60 based on *Harrop*, *Burton*, *Rostron*, and *Fee*.

**VII. Conclusion**

In view of the foregoing, Applicant submits that the pending claims are neither anticipated nor rendered obvious in view of the cited art. Applicant, therefore, requests the Examiner's reconsideration of the application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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By: \_\_\_\_\_  
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